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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 BENJAMIN ROBERT GALLEGOS,

12 Plaintiff,

13 v.

14 R. FERNANDEZ, et al.,

15 Defendants.
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No. 2:24-cv-2526 DJC CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

18 Plaintiff is a state prisoner housed at California State Prison, Sacramento (CSP-Sac)
19 proceeding pro se. This action proceeds on a claim for injunctive relief against defendant
20 California Department of Corrections and Rehabilitation (CDCR) and a claim for damages
21 against defendant Sgt. Brinton.¹ Both claims concern the denial of plaintiff's First Amendment
22 right to intimate association based upon plaintiff being denied visitation with his wife.
23 Defendants have filed a motion to dismiss. The plaintiff has filed an opposition to the motion as
24 well as a sur-reply. As sur-replies are not permitted under Local Rule 230(l), and plaintiff did not
25 obtain leave to file a sur-reply, the sur-reply will be stricken.

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28 ¹ Sgt. Brinton is referred to as Sgt. "Britton" in plaintiff's amended complaint (ECF No. 15).

1 I. Standard

2 Defendants seek dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to
3 state a claim upon which relief can be granted. When considering whether a complaint states a
4 claim upon which relief can be granted, the court must accept the allegations as true, Erickson v.
5 Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most favorable to the
6 plaintiff, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). In ruling on a motion to dismiss
7 pursuant to Rule 12(b)(6), the court “may generally consider only allegations contained in the
8 pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice.”
9 Outdoor Media Grp., Inc. v. City of Beaumont, 506 F.3d 895, 899 (9th Cir. 2007) (citation
10 omitted).

11 II. Allegations

12 In his amended complaint (ECF No. 15) plaintiff alleges that he has been denied visitation
13 with his wife without explanation since they were married on February 24, 2023.² Plaintiff
14 indicates that defendant Brinton believes plaintiff’s wife cannot be permitted to visit plaintiff so
15 she will not process the request for visitation submitted two years ago. Plaintiff seeks damages
16 against Brinton and approval of visits.

17 III. Arguments and Analysis.

18 The right of intimate association arises under the First Amendment, but the right of any
19 association is “among the rights least compatible with incarceration.” Overton v. Bazetta, 539
20 U.S. 126, 131 (2003). Limits on the right of association is appropriate in the prison context. Id.
21 Limits on freedom of association imposed by prison regulations are permissible as long as the
22 regulation at issue bears a rational relationship to legitimate penological interests. Id. at 132.

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25 ² Plaintiff attaches several exhibits to his opposition to defendants’ motion to dismiss. Even if
26 the court could consider the exhibits, which the court cannot, it is not clear the reasons given to
27 plaintiff and his wife as to why her request for visitation has been effectively denied. The
28 possibilities include that she provided plaintiff a phone while he was incarcerated, or that she is a
former employee of CDCR. Defendants are free to present any evidence they have as to why
visitation was denied in a motion for summary judgment, and present argument that visitation was
and is being denied for reasons rationally related to legitimate penological interests.

1 First, defendants seek dismissal because plaintiff fails to plead the absence of a rational
2 relationship to legitimate penological interests with respect to his being denied visits with his
3 wife. However, he does do that on pages 3 and 4 of his amended complaint.

4 Defendants also argue that plaintiff's claims must be dismissed because plaintiff fails to
5 allege that "there are not alternatives that fully accommodate Plaintiff with minimal cost to valid
6 penological interests." ECF No. 34 at 3. Defendants assert that plaintiff being able to communicate
7 with his wife by means other than visitation (e.g. correspondence) is sufficient to satisfy his right of
8 association. However, defendants provide no case law suggesting that the First Amendment requires
9 only that inmates be permitted to communicate with their spouses or that mere communication is
10 sufficient to vindicate plaintiff's right of intimate association. The court cannot find that prisons have
11 an unfettered right to deny all visitation between prisoners and spouses.

12 Defendants suggest that whether plaintiff will be allowed visitation with his wife is under
13 review and that conducting a review as to whether a particular visitor will be permitted to visit is
14 in "the penological interest of ensuring the safety, security, and order of the institution." Id. at 6.
15 However, if the request for visitation is still pending that means it has been pending since December
16 of 2023, one year before plaintiff filed the amended complaint. Without anything more, a two-year
17 delay in processing a request for visitation does not serve any rational purpose. If defendants have
18 evidence indicating it does, it could be presented in a motion for summary judgment.

19 Accordingly, IT IS HEREBY ORDERED that the sur-reply filed by plaintiff on
20 September 18, 2025, is stricken.

21 IT IS HEREBY RECOMMENDED that defendants' motion to dismiss (ECF No. 34) be
22 denied.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned
27 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
28 objections shall be served and filed within fourteen days after service of the objections. The

1 parties are advised that failure to file objections within the specified time may waive the right to
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: October 21, 2025



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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